

1 Thomas F. West and Diana M. West  
2 5620 Scenic Pointe Ave.  
3 Las Vegas, Nevada 89130  
4 Telephone (702 ) 656-3081  
5 Plaintiffs in Proper Person

260 270 -1 2010-00

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7 UNITED STATES DISTRICT COURT  
8 District of Nevada

9 THOMAS F. WEST and DIANA M. WEST )  
10 PLAINTIFFS ) Case No.: 2:10-cv-01966-JCM-PAL  
11 vs. )  
12 BANK OF AMERICA, N.A. and ) OPOSITION TO MOTION TO DISMISS  
13 BANK OF AMERICA HOME LOANS and ) And REQUEST FOR DISMISSAL OF  
14 BAC HOME LOANS SERVICING LP and ) MOTION  
15 MERS - Mortgage Electronic Registration  
16 Services )  
17 DEFENDANTS )

18 Thomas F. West and Diana M. West, Plaintiffs, in proper person, submit their Opposition  
19 to Motion to Dismiss. Plaintiffs were not served with this Motion by Defendants. Plaintiffs after  
20 receiving the Minutes of the Court dated November 16, 2010, have looked for service of Motion  
21 from Defendants. As of this date, November 30, 2010, it has not been received pursuant to Fed.  
22 R. Civ. P. 5(b). Having received notice through Minutes of the Court dated November 16, 2010  
23 which was received on November 18, 2010, Plaintiffs have been anticipating receipt of the  
24 referred motion by "a party or parties" alluded to in the Minutes and accessed through electronic  
25 means court filing records and subsequently found November 30, 2010 that a Motion for  
26 Dismissal had been filed on November 16, 2010. As of November 22, 2010, when an Amended  
27 Complaint was filed with the Court Clerk, there was no evidence that any Motions or Responses  
28 had been filed and therefore, the Amended Complaint was accepted by the Court.

1       Through a quick review of the supposed Motion filed with the Court, which was not  
2 properly serviced upon Plaintiffs, it is evident that the Defendants cannot show ownership of the  
3 alledged Mortgage Loan. Plaintiffs will prove that Defendants do not now own the original  
4 Deed of Trust, the Mortgage Note and supporting original documents and that Defendants have  
5 no knowledge of who does own the original Deed of Trust and Mortgage Note or their  
6 whereabouts. In the case of Mortgage Electronic Registration Systems, Inc. v. Chong, Case No.  
7 2:09-CV-0661-KJD-LRL (2009), the United States District Court, District of Nevada stated that  
8 "MERS did not establish it was a real party in interest. MERS was unable to prove it had  
9 possession of the note or at least provide evidence that it was a representative of the mortgage  
10 loan holder, which it failed to do." Additionally, in Landmark National Bank v. Kesler, 289  
11 Kan. 528,216 P.3d 158(2009). "Kan. Stat. Ann. § 60-260(b) allows relief from a judgment based  
12 on mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence that could  
13 not have been timely discovered with due diligence; fraud or misrepresentation; a void judgment;  
14 a judgment that has been satisfied, released, discharged, or is no longer equitable; or any other  
15 reason justifying relief from the operation of the judgment. The relationship that the registry had  
16 to the bank was more akin to that of a straw man than to a party possessing all the rights given a  
17 buyer." Also in September of 2008, a California Judge ruling against MERS concluded, "There  
18 is no evidence before the court as to who is the present owner of the Note. The holder of the  
19 Note must join in the motion." Wells Fargo v. Reyes, 867 N.Y.S.2d 21 (2008). Case dismissed  
20 with prejudice, fraud on the Court and Sanctions because Wells Fargo never owned the  
21 Mortgage.

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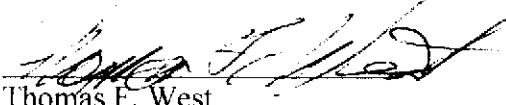
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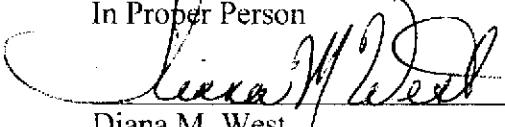
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Therefore, we move that the Court dismiss Defendants Motion to Dismiss for lack of  
standing with the Court in this case and grant Plaintiffs request for Motion for Dismissal of the  
same.

Dated this \_\_\_\_ day of December, 2010.

  
Thomas F. West

Plaintiff

In Proper Person

  
Diana M. West

Plaintiff

In Proper Person

UNITED STATES DISTRICT COURT  
For the District of Nevada

THOMAS F. WEST AND }  
DIANA M. WEST } Case No.: 2:10-cv-01966-JCM-PAL  
Plaintiffs }  
vs. }  
BANK OF AMERICA, N.A. and }  
BANK OF AMERICA HOME LOANS and }  
BAC HOME LOANS SERVICING LP and }  
MERS - Mortgage Electronic Registration }  
Services }  
Defendants }  
OPPOSITION TO MOTION TO DISMISS  
And REQUEST FOR DISMISSAL OF  
MOTION

**CERTIFICATE OF MAILING**

I, Thomas F. West, hereby certifies that a copy of the Opposition to Motion to Dismiss and Request for Dismissal of Motion filed on the 1 day of December, 2010, in the above-entitled case was mailed by me on December 1, 2010 by depositing copies thereof in a sealed envelope, first-class postage prepaid, in the United States mail, to

Ariel E. Stern, Esq.  
Akerman Senterfitt LLP  
400 South Fourth Street, Suite 450  
Las Vegas, NV 89101

Christine M. Parvan, Esq.  
Akerman Senterfill LLP  
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Las Vegas, NV 89109

Bank of America, N.A.  
Brian Maynihan, President, CEO  
100 N. Tyron St.  
Charlotte, NC 28263

**Certificate of Mailing, cont'd**

Bank of America Home Loans  
Barbara J. Desoer, President  
333 So. Hope  
Los Angeles, CA 90072-1406

BAC Home Loans Servicing, LP  
400 National Way  
Simi Valley, CA 93065-6285

MERS - Mortgage Electronic Registration Systems  
RK Arnold, President CEO  
1818 Library Street, Suite 300  
Reston, VA 20190

Dated: December 1, 2010

Thomas F. West  
Plaintiff  
In Proper Person